

FILED

JUN - 8 1992

TRIBAL/STATE TOBACCO TAX COMPACT

OKLAHOMA SECRETARY  
OF STATE

WHEREAS, the Choctaw Nation, the compacting Indian Nation (hereinafter referred to as "Nation"), is a federally recognized Indian Nation with sovereign powers of self-government;

WHEREAS, the State of Oklahoma (hereinafter referred to as "State") is an independent sovereign state within the United States of America possessed of full powers of state government;

WHEREAS, the Choctaw Nation and its membership are in possession of various tracts of land in its domain within the State, known and commonly referred to as "Indian Country";

WHEREAS, the State of Oklahoma by and through the United States Supreme Court decision in Oklahoma Tax Commission vs. Citizen Band Pottawatomi Indian Tribe of Oklahoma contends it is authorized to collect state taxes on cigarettes and tobacco products sold by tribal businesses to non-tribal members;

WHEREAS, federal Indian law recognizes that tribal jurisdiction is extant in Indian Country regarding the rights of Indian tribes to pass their own laws and be governed by them, including the right to sell cigarette and tobacco products to tribal members free from state taxation; and

WHEREAS, the State recognizes the financial, cultural, educational and economic contributions of the Nation to the State and its citizens and the Nation in turn recognizes the need to develop and maintain good tribal/state governmental relations in this period of cooperation.

NOW, THEREFORE, the Choctaw Nation by and through its Chief, Hollis Roberts, and the State of Oklahoma by and through its Governor, David Walters, do hereby enter into this Compact for the mutual benefit of the Nation and the State to wit:

1. All sales of cigarettes and tobacco products in Indian Country as defined by federal law shall be governed by the provisions of this Compact, when said sales are made by businesses owned by the Nation, by licensees who are members of the Nation, or by businesses licensed by the Nation and in which the majority interest is owned by the Nation or by members of the Nation.

2. The Nation agrees to require as a condition to licensing that all the Nation's retail licensees who are members of the Nation, all the Nation's retail licensees which are businesses in which the majority interest is owned by the Nation or by members of the Nation, and wholesale licensees will comply with the provisions of this compact.

3. The Nation or its licensees shall make a payment to the State of Oklahoma in lieu of state tobacco excise and sales taxes in the amount of twenty-five percent (25%) of all applicable excise taxes on all cigarettes and tobacco products purchased by the Nation or the Nation's licensees for resale in Indian Country of the Nation, without reference to the membership or non-membership status of the purchasing public.

4. Any store, not tribal owned or licensed, operating within the Nation's Indian Country and engaging in the sale of cigarettes and tobacco products shall not be subject to the provisions of this compact.

5. All payments in lieu of state taxes shall be collected by all wholesalers, distributors, jobbers or warehousemen selling cigarettes and tobacco products to the Nation and to the Nation's licensees for resale in Indian Country and shall be collected at the time of the wholesale transaction and included in the wholesale purchase price for remission to the State.

6. The Nation agrees to purchase cigarettes and tobacco products only from wholesalers, distributors, jobbers or warehousemen licensed by the State, or from wholesalers, distributors, jobbers or warehousemen who agree to provide for verification to sales to the Nation and tribal licensees and who agree to allow verification of sales to be made by state officials on a timely basis. The Nation shall at all times maintain and provide the State with a current list of all its tribal owned and licensed retail stores and all wholesalers, distributors, jobbers or warehousemen shall forward copies of all invoices of wholesale sales to the Nation's tribal owned or licensed tobacco retail outlets to the State of Oklahoma and to the Nation.

7. All cigarettes sold shall bear tribal and state stamps or a single stamp approved by both parties, verifying that all applicable tribal taxes and payments in lieu of state taxes have been paid to the wholesaler at the time of purchase. In the event that both tribal and state stamps are used, each party shall bear its respective cost of affixing its stamp. In the event a single stamp is used,

the State shall bear all costs relative thereto, unless there is mutual agreement otherwise. At the option of the Nation, it, someone on behalf of the State or the wholesaler, distributors, jobbers or warehousemen shall affix the required stamp or stamps.

8. Both parties agree that unstamped cigarettes are contraband, and that each party has the right to seize contraband. The Nation may seize all contraband located within its Indian country. The State may seize all contraband located within the lawfully recognized boundaries of the State of Oklahoma, excluding Indian Country of the Nation.

9. The State shall exempt all sales of cigarettes and tobacco products to and by the Nation and its licensees from sales and excise taxes in lieu of the agreement by the Nation to make the aforementioned payment in lieu of state taxes.

10. Any dispute arising in the interpretation or performance of this Compact, which is not resolved by good faith negotiations within thirty (30) days, shall be subject to binding arbitration. Arbitration may be invoked by either party following the negotiation period should the dispute remain unresolved. Arbitration shall be the exclusive means of resolving such disputes subject only to review by the United States District Court having jurisdiction and venue. When arbitration is invoked a panel of arbitrators consisting of three (3) members shall be appointed. One shall be appointed by the Nation and one by the State. A third shall be appointed by the other two members or should they disagree, then by the American Arbitration Association. The expenses of arbitration shall be born equally by the parties. The arbitrators shall adopt their own procedural rules regarding the arbitration process in conformity with the Rules of the American Arbitration Association.

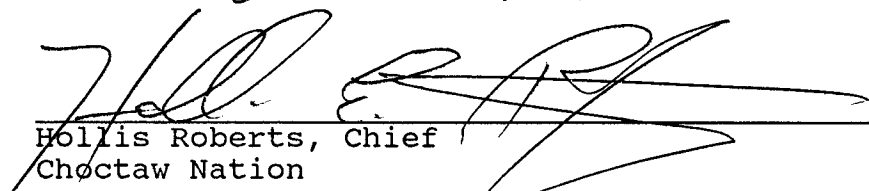
1. The term of this agreement shall be ten (10) years from its effective date. At the end of said term, this Compact shall continue in full force and effect for consecutive terms of ten (10) years, unless either party hereto gives to the other written notice that the Compact shall terminate at the end of the present term, provided that such notice is given at least six (6) months prior to said termination.

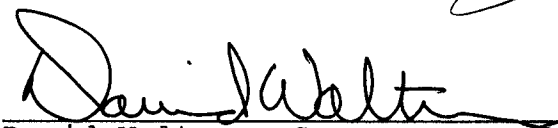
12. By entering into this compact, the Nation does not concede that the laws of the State of Oklahoma, including its tax laws, apply to the Nation or its members regarding activities and conduct on its Indian Country.

13. Each party shall hold the other, including its agents and licensees, harmless from any past taxes or payments in lieu of taxes on cigarettes and tobacco products.

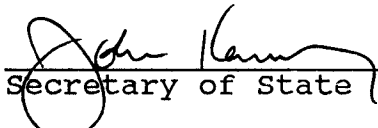
14. This compact shall be effective on January 1, 1993. provided that it shall not be effective until and unless it is fully executed by all parties and there is attached hereto the original, or a properly certified copy of the properly prepared and approved resolution of the Legislature of the Nation authorizing the Nation to enter into and execute this agreement.

IT IS AGREED this 8 day of JUNE, 1992.

  
Hollis Roberts, Chief  
Choctaw Nation

  
David Walters, Governor  
State of Oklahoma

ATTEST:

  
Secretary of State